

**IN THE HIGH COURT OF THE UNITED REPUBLIC OF TANZANIA**

**MOSHI DISTRICT REGISTRY**

**AT MOSHI**

**MISC.LAND CASE APPEAL NO. 40 OF 2019**

*(C/F Bill of cost No. 140 of 2017)*

*(C/F Misc. Application No. 24 of 2016 of Moshi District Land and Housing Tribunal)*

**JOHN W. SHIRIMA .....APPELLANT**

**VERSUS**

**HASSAN RAJABU .....1<sup>ST</sup> RESPONDENT**

**SERAFINI D. KIMARIO .....2<sup>ND</sup> RESPONDENT**

**19<sup>TH</sup> AUGUST, 2020 & 18<sup>TH</sup> SEPTEMBER, 2020**

**RULING**

**MKAPA, J:**

The applicant John W. Shirima is seeking extension of time to file Reference out of time against the Ruling in **Bill of Cost No. 140/2017** delivered on 27<sup>th</sup> day of February 2018 by the Taxing Master Hon. Wagine (Chairman) District Land and Housing Tribunal for Moshi at Moshi. The application is made under Order 8 (1) and (2) of the **Advocate Remuneration Order, 2015**

GN. No. 264/2015.

Brief facts that have given rise to this application are to the effect that the Applicant instituted a suit at Miembeni Ward Tribunal

against the Respondents in which the decision was in favour of the applicant. On 15<sup>th</sup> March, 2016 the applicant filed an application for execution vide Misc. Application No. 24 of 2016 and the same was dismissed with costs on 19<sup>th</sup> April, 2017. Meanwhile, the respondent filed application for Bill of cost through Bill of Cost No.140 of 2017 to the tune of shillings 1,968,000/= but the District Land and Housing Tribunal awarded him shillings 2,398,000/=. The Applicant filed in this court Land Reference No. 02 of 2018; the respondent raised preliminary objection to the effect that the same was time barred. The court (**Twaib, J.**) dismissed the application on 15/08/2019 for being time barred.

On the date this application was set for hearing the applicant appeared in person unrepresented while the respondents were represented by Mr. Mussa K. Mziray, learned advocate. The application was argued by way of written submissions.

Submitting in support of the application the applicant submitted that it is settled principle the fact that for an application for extension of time to be granted the applicant has to establish sufficient cause for the delay and more so, each day of delay has to be accounted. He supported his argument with the decision in the case of **Godwin Ndewesi and Karoli Ishengoma V.**



**Tanzania Audit Corporation (1995) TLR 200**, where the court held that;

*" the rules of the court must prima facie be obeyed; and in order to justify extending time during which some steps in proceedings to be taken there must be some material on which the court can exercise its discretion"*

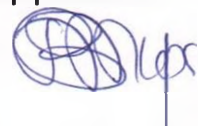
The applicant went on explaining the fact that the Ruling in Bill of Costs No. 140/2018 was delivered on 27<sup>th</sup> day of February 2018 and immediately after being delivered he did apply to be supplied with a copy of the ruling and order extracted therefrom. However, the applicant argued that the said copies were supplied to him on 20<sup>th</sup> day of March 2018 when the time to file the Reference had already lapsed. Furthering his argument the applicant contended that the delay was also caused by the time he spent in prosecuting Land Reference No. 2 of 2018 which this court struck out for being time barred.

It was the applicant's further contention that, the Ruling in Bill of cost No.140 of 2017 was tainted with illegality among them being the decision of the Chairman of the District Land and Housing tribunal to award shillings 2,398,000/= instead of shillings

1,968,000/= claimed by the respondent. The appellant went on explaining that another illegality was the fact that the Respondent had filed the Bill of Cost out of the prescribed time as prescribed by Order 4 of the Advocate Remuneration Order, 2015 which requires a decree holder within sixty days from the date of an order awarding costs to lodge an application for taxation.

He went on submitting that as per the records the Ruling for Application No. 24 of 2016 was delivered on 19<sup>th</sup> April, 2017 and application for Bill of Cost No. 140/2017 was presented for filing on 19<sup>th</sup> day of June, 2017. (61 days) from the date of decision (19<sup>th</sup> day of April). Finally, the applicant prayed for this application to be allowed.

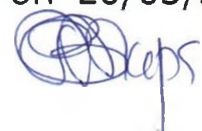
In reply Mr. Mziray conceded the fact that the respondent had claimed for shillings 1,968,000/= vide Bill of Costs No. 140/2017. He went on explaining that the taxing master taxed to the tune of shillings 1,968,000/= and taxed off shillings. 20,000/=. The rest of the award were prosecuting costs. The taxing master had awarded shillings. 450,000/= as costs for attending and prosecuting the bill, thus making a total of shillings 2,368,000/=. Therefore, it was counsel for the respondent's view that the Bill of costs was not erroneously awarded as alleged by the applicant.





Therefore, it was counsel for the respondent's view that the Bill of costs was not erroneously awarded as alleged by the applicant.

Furthering his argument Mr. Mziray submitted the fact that Land Reference No. 2 of 2018 was dismissed with costs for being time barred for 51 days which was inordinate and the applicant never showed good cause for the delay. Mr. Mziray wondered why the applicant is bringing the issue of Land Reference No. 2 of 2018 being one of the reason for the delay. It was Mr. Mziray's view that following the dismissal of the Land Reference No. 2 of 2018 the applicant ought to have appealed against the decision of this court (**Twaib J;**) as the only available remedy instead of filing the application for extension of time against the Bill of Cost No. 140/2017 which had been referred to in this court as Reference No. 2/2018. The learned advocate further submitted that copies of ruling and drawn order were available at the tribunal before 20/03/2020 as clearly shown in the ruling and drawn order which were both signed on 27/02/2018. The drawn order was extracted from the ruling thereof but the date which was issued was when the applicant had applied for it as evidenced in the records that the applicant was issued with drawn order on 20/03/2020 when he paid for the fees and collected the drawn order. Thereafter he was supplied with copies of ruling and drawn order on 20/03/2018

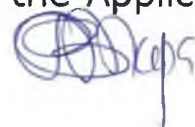


(within time) but for reasons best known to himself the applicant decided to file the Application on 20/04/2020 while already time barred.

On the allegations that the Bill of Costs No. 40/2017 was tainted with illegalities as the applicant's reason for applying for extension of time, Mr. Mziray refuted the allegations as baseless since the respondents' claim was to the tune of shillings. 1,968,000/= and the tribunal taxed the claim to the tune of shillings 1,948,000/= then taxed off shillings. 20,000/= the amount which was reasonable and the tribunal further awarded shillings 450,000/= as costs for attending and prosecuting the Bill of Costs Thus it was the respondent's view that the taxing master's award amounting shillings 2,968,000/= was appropriate and reasonable.

Regarding the argument that the bill of costs was filed out of time the respondent submitted that the same was baseless as the Ruling in **Misc. Application No. 24/2016** was delivered on 19/04/2017 while the Bill of Costs No. 140/2017 was presented before the tribunal on 16/06/2017 when the stamp of the tribunal was affixed to the Bill and the certificate.

Finally, the counsel for the respondent prayed for the Application to be dismissed in its entirety with costs.



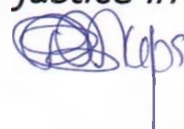
In his rejoinder, the applicant reiterated what he had earlier submitted in submission in chief.

Having considered both parties argument for and against the application the question for determination is whether the applicant has shown sufficient reasons to warrant this court to grant the extension of time sought.

It is settled that in granting extension of time the court does not only consider if there are sufficient reasons for the delay but also the reasons have to be sufficient enough. This position has been fortified in the case of **R V.YonaKaponda & 9 Others** [1985] T.L.R. 84 and reiterated in numerous decisions of the Court including **Benedict Mumello V Bank Of Tanzania**, E.A.I.R [2006], **Eliakim Swai And Another V Thobias Karawa Shoo**, Civil Application No. 2 Of 2016 (Cat) At Arusha (Unreported).

Prior to determining the merits and demerits of the instant application my perusal of the records has revealed that this court (**Twaibu, J.**) had dismissed an appeal emanating from Land Reference No. 2 of 2018 in **Land Case Application No. 140 of 2017**. While dismissing the appeal he had this to say;

*" in view of the above, I am of the settled opinion that an order for costs will not be in the interest of justice in*



*the circumstances of the case. Accordingly, I dismiss the application for being time barred, with no order as to costs.*

*F.A. Twaibu*

*JUDGE*

*15<sup>th</sup> AUGUST, 2019"*

From the above legal position I am of the settled view that the instant application is an abuse of court processes and the applicant is barred by law from seeking an extension of time to refile a dismissed application. The decision in the case of **Hashim Madongo and Two Others V Minister for Industry and Trade and Two Others**, Civil Appeal No. 27 of 2003, is illustrative on the fact when the Court of Appeal at Page 10 and 11 held *inter alia* that;

*"That after the application before Kalegeya, J. was dismissed, as it should have been, it was not open to the appellants to go back to the High Court and file the application subject of this appeal ... the only remedy available to the appellants after the dismissal of the application was to appeal to the Court of Appeal and that the application for extension of time ought to have*





*been filed prior to filing the application for prerogative orders ...”*

The above legal position was reiterated in the case of **Tanzania Breweries Ltd V Edson Muganyizi Barongo & 7 Others**, Misc. Labour Application No. 79 of 2014 where the court had this to say;

*“...I think by and large that the present application which seeks to resurrect the application that was dismissed by this court (Rweyemamu J.) by way the applicants have adopted, cannot in my interpreting the case laws above be left to stand, it is worthless because if I grant the present application, I will be granting them an opportunity to bring back the application which Rweyemamu, J. dismissed. This cannot be done in premio legis (from the bosom of the law) if aggrieved by the dismissal of their application ... they should have taken the correct avenue of appealing against the dismissal of the their application to the Court of Appeal rather than coming from the backyard door by way of application for extension of time to file an application for being time barred by law...”*

Subjecting the above legal authorities to the instant application, I fully subscribe to the above legal authorities thus, I have no



hesitation to hold that this application lacks merit and is hereby dismissed with costs. It is so ordered.

Dated and delivered at Moshi this 18<sup>th</sup> day of September, 2020



  
**S.B. MKAPA**  
**JUDGE**  
**18/09/2020**